IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
Appeal From Order No. 530 of 2001
(Old No. FAFO 665 of 1981)

The New India Assurance Company Ltd., Bareilly.
…Appellant.

Versus

1. Smt. Kamla Devi Agarwal widow of Kundan Lal Agarwal (since deceased)
2. Shri Ram Agarwal (since deceased) represented by his L.R.

2/1 Yogesh Agarwal S/O Sri Ram Agarwal.

3. Krishan Chandra Agarwal Sons of Kundan Lal Agarwal,
4. Mohan Lal Agarwal (since deceased)
5. Km. Meera Rani Agarwal, daughter of late Kundan Lal,
6. Hanuman Prasad Agarwal, minor.
7. Anand Kunar Agarwal, minor,
8. Raj Kumar Agarwal, minor,
9. Manoj Kumar Agarwal, minor. Nos. 6, 7, 8, and 9 minor sons of late Sri Kundan Lal Agarwal, through their mother, natural guardian and next friend Smt. Kamla Devi Agarwal, respondent no. 1. All residents of Bhalla Medical Hall Wali Gali, Rudrapur, Tashil Kichha, District Nainital. (Claimants)
10. Abdul Salam son of Babban resident of Nazar Shidi Miyan, P.S. Bilaspur, District Rampur, U.P.
11. Kashmira Singh son of Arjun Singh, resident of village Khoonta, Khara, Tahsil Bilaspur, District Rampur, U.P.

… **Respondents.**

Sri T.A.Khan, Advocate, learned counsel for the appellant-Insurance Co..
Sri V.D.Bisen Adv., learned counsel for the claimant-respondents.

Date November 09, 2006.

PC: Hon'ble B.S. Verma, J.

This appeal under Section 110-D of the Motor Vehicles Act, 1939 ***(for short the Act)*** is directed against the judgment and award dated 24-8-1981 passed by the Motor Accidents Claims Tribunal/I Additional District Judge, Nainital ***(for short the Tribunal***), whereby compensation of Rs. 70,666/- along with interest @ 6% per annum was awarded in favour of the claimant nos. 1, 5, 6, 7, 6 and 9 and out of the said amount, the Insurance Company was made liable to pay compensation of Rs. 50,000/- and the owner of the vehicle was directed to pay the remaining amount of 20,666/-.

Brief facts of the case are that on 4-6-1979, Kundan Lal Agarwal suffered fatal injuries in a motor vehicle accident and died involving truck No USK- 1349, which was being driven rashly and negligently by its driver Jahid. According to the claimants, the deceased Kundan Lal was pillion ride in the motor cycle driven by one Lt. Col. G.S.Dhillon. As a result of negligence on the part of the truck driver, the deceased Kundanlal became unconscious and he was shifted to Bareilly hospital, where he succumbed to his injuries on 4-6-1979 itself at 3.20 p.m. It is alleged that the deceased was earning Rs. 1,000/- from business. The offending vehicle was owned by Abdul Salam and Kashmira Singh and the same was duly insured with New India Assurance Company-appellant. The claimants, who are legal heirs of the deceased, have filed the present claim petition for compensation of Rs. 3,00,000/-.

The owners of the truck filed their written statement and contested the petition on the ground that the accident was not caused due to rashness or negligence on the part of the driver, rather the accident took place due to the rash and negligent driving of the motor cyclist. It was also asserted that the vehicle was duly insured, therefore, the liability for compensation lay upon the insurer. The quantum of compensation was also questioned. It was also stated that the deceased was insured for more than Rs. 2,00,000/- with the Life Insurance Corporation of India, the amount whereof has already been paid to the claimants, therefore, they cannot get double benefit on account of accidental death of the deceased.

The insurance company also filed its written statement and asserted that the truck in question was not being driven rashly and negligently. No information was sent to the Insurance Company regarding the said accident. It was also stated that the truck was not being driven by a duly licensed driver. The amount of LIC received by the claimants is liable to be deducted from the compensation.

On the pleadings of the parties, following issues were framed:-

1. Whether the accident took place due to the rash and negligent driving of truck no. USK–1349?

2. Whether the vehicle was being driven at the relevant time by a person without a valid driving licence?

3. To what amount of damages and against which of the respondents are the claimants entitled?

The learned Tribunal recorded the evidence led by the parties, heard them and after perusing the evidence took up Issue No.2 relating to validity of driving licence for decision. On behalf of the owners of the truck D.W.1 Jahid was produced as D.W.1. He has given clear-cut statement that he was driving the truck at the time of accident. He clearly denied the suggestion that it was the cleaner who was driving the vehicle. The respondent no. 3 has utterly failed to prove that the vehicle was being driven by a person not duly licensed. It was concluded that the truck in question was being driven by Jahid D.W.1 who was having a valid driving licence. The learned Tribunal took up Issue No.1 for decision, which related to the rash and negligent driving. After elaborately dealing with the issue in the light of the evidence from page 4 to page 11 of the impugned judgment, the learned Tribunal gave a categorical finding to the effect that the truck in question was being driven in a rash and negligent manner by its driver Jahid and that the accident occurred due to rash and negligent driving of the truck. The learned Tribunal after dealing with the issue of quantum of compensation considering the age and income of the deceased held that the deceased was having income of Rs. 10,600/- per year and taking the age of the deceased to be 45 years at the time of accident, the life expectancy was taken upto the age of sixty years and the total loss of income was arrived at 15 x 10,600/- = Rs. 1,59,000/- and after deducting 1/3rd from it towards personal expenses, the amount came to be Rs. 1,06,000/-. The learned Tribunal further deducted further 1/3rd

amount towards lump-sum payment, which ultimately came to Rs. 70,666/- The learned Tribunal declined to deduct the amount of L.I.C. Policy from the amount of compensation. The learned Tribunal and ultimately decreed the claim petition for an amount of Rs. 70,666/- along with interest @ 6% per annum payable to claimant nos. 1, 5, 6, 7, 8 and 9. Out of this amount, the Insurance Company was fastened liability to pay Rs. 50,000/- as its limited liability and the rest of the amount of compensation was ordered to be paid by the owners of the vehicles- Opposite Party Nos. 1 and 2 vide judgment and award dated 24-8-1981.

At the outset it may be mentioned that the appellant-Insurance Company has assailed the impugned award only on the point of rashness and negligence as well as quantum of compensation. It is settled law that the appeal by the insurer can be filed on limited grounds. In the instant case, the owner as well as the Insurance Company has contested the claim petition from the initial stage till the conclusion of the proceedings before the learned Tribunal. Moreover, no application under Section 110-C(2-A) of the Act, which corresponds to Section 170 of the new Motor Vehicles Act 1988 was moved by the appellant and no such permission was granted in favour of the insurer. In the facts and circumstances of the case, in view of the law laid down by the Apex Court in the case of ***"National Insurance Company Ltd. Vs. Nicolletta Rohtagi and others"[(2002) 7 S.C..C. 456]*** the appeal is not maintainable. In that case, it has been observed that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".***

The impugned award has also been assailed on the ground that the driver of the offending truck was not having a valid

driving licence. On the plea of the Insurance Company, Issue no. 2 was framed by the learned Tribunal. In the case of ***"Punam Devi and another Vs. Divisional Manager, New India Assurance Co. Ltd. and others" [(2004) 3 SCC, Page 386],*** it was held by the Apex Court that *"Insurance company neither pleading nor leading evidence that the offending driver had no licence-Claims Tribunal awarding compensation-Held, quantum of compensation cannot be challenged and the only ground open to the Insurance Company is under S.149(2), to show that the insured was negligent or that he failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicle- Since the Insurance Company failed to discharge this burden, High Court erred in allowing the appeal."* In the case at hand, the Insurance Company has not discharged its burden. The learned Tribunal has rightly decided Issue No.2 against the Insurance Company.

It the result, the appeal preferred by the Insurance Company deserves to be dismissed.

The appeal is accordingly dismissed. No order as to costs.

The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant-respondents as per award passed by the learned Tribunal.

(B.S. Verma, J.)

RCP